

CCRB INVESTIGATIVE RECOMMENDATION

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|--|--|---------------------------|--|------------------------------------|---------------------------------|
| Investigator: Griffin Sherbert | Team: Squad #7 | CCRB Case #: 201804023 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Saturday, 05/12/2018 1:00 AM | Location of Incident: Avenue D and Utica Avenue | Precinct: 67 | 18 Mo. SOL 11/12/2019 | EO SOL 11/12/2019 | |
| Date/Time CV Reported Mon, 05/14/2018 4:30 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Mon, 05/21/2018 11:03 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
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| Subject Officer(s) | Shield | TaxID | Command |
|---------------------|--------|--------|---------|
| 1. POM James Holder | 18361 | 951823 | PBBS SU |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|--------------------------|-----------|--------|----------|
| 1. POM Sanjay Lall | 00831 | 955038 | PBBS SU |
| 2. POM Michael Sidorskiy | 14429 | 931988 | PBBS SU |

| Officer(s) | Allegation | Investigator Recommendation |
|--------------------|--|-----------------------------|
| A.POM James Holder | Abuse: Police Officer James Holder frisked § 87(2)(b) [REDACTED] | |
| B.POM James Holder | Abuse: Police Officer James Holder searched § 87(2)(b) [REDACTED] | |
| C.POM James Holder | Abuse: Police Officer James Holder searched the trunk of the vehicle in which § 87(2)(b) [REDACTED] was an occupant. | |

Case Summary

On May 14, 2018, § 87(2)(b) called the IAB Command Center, wherein he filed the following complaint on behalf of himself and his acquaintance, § 87(2)(b). On May 21, 2018, the CCRB received this complaint from IAB.

On May 12, 2018, at approximately 1:00 a.m., § 87(2)(b) was driving § 87(2)(b) in the vicinity of the intersection of Avenue D and Utica Avenue in Brooklyn, when they were stopped by an unmarked RMP containing Police Officer James Holder, Police Officer Sanjay Lall, and Police Officer Michael Sidorskiy, all assigned to Patrol Borough Brooklyn South Specialized Unit. The officers approached, and after observing § 87(2)(b) being in possession of a gravity knife, PO Holder ordered § 87(2)(b) and § 87(2)(b) to exit the vehicle. PO Holder frisked and potentially searched § 87(2)(b) (**Allegation A: Abuse of Authority,** § 87(2)(g) **Allegation B: Abuse of Authority,** § 87(2)(g)).

§ 87(2)(b) and § 87(2)(b) were ordered to stand at the back of the vehicle, and the officers searched the passenger compartment of § 87(2)(b)'s vehicle. Afterward, PO Holder ordered § 87(2)(b) to open the trunk and conducted an additional vehicle search (**Allegation C: Abuse of Authority,** § 87(2)(g)).

There is no video evidence in this case.

Findings and Recommendations

Allegation A—Abuse of Authority: Police Officer James Holder frisked § 87(2)(b)

Allegation B—Abuse of Authority: Police Officer James Holder searched § 87(2)(b)

§ 87(2)(b) stated that on May 12, 2018, at approximately 1:00 a.m., after being pulled over by an unmarked RMP, PO Holder approached the driver side of the vehicle and asked him to produce his license and registration (BR01). § 87(2)(b) said ok, and told PO Holder that he guessed he was being pulled over for his vehicle's tinted windows. PO Holder took § 87(2)(b)'s license and registration, and asked who owned the car. § 87(2)(b) replied that he owned the car, and presented his "courtesy shield," a miniature detective shield, as well as a Detectives' Endowment Association ("DEA") card (BR10). PO Holder did not have a response to being presented the courtesy shield or DEA card.

After two minutes of speaking privately to the other officers and looking at his department cell phone, PO Holder ordered § 87(2)(b) and § 87(2)(b) to exit the vehicle and they complied. § 87(2)(b) asked why and PO Holder stated that he had a warrant. § 87(2)(b) disagreed and asked what the warrant was in regards to, however, PO Holder replied that he did not know, and said the only way he would be able to find out would be to take § 87(2)(b) in. § 87(2)(b) said he could not go in because he was driving to Washington D.C., and still needed to pick up another passenger, but ultimately told PO Holder "do what you gotta do." PO Holder ordered § 87(2)(b) and § 87(2)(b) to stand at the back of the vehicle and they complied.

At the rear of the vehicle, PO Holder asked § 87(2)(b) if he had any weapons on him. § 87(2)(b) said no and PO Holder patted down § 87(2)(b)'s legs, pockets, and torso. § 87(2)(b) was compliant with the frisk. § 87(2)(b) recalled that his pockets were emptied, but he did not know whether he or PO Holder took his personal effects out of his pockets. Although he claimed that it occurred later in the chronology of the incident and had no knowledge of its existence beforehand, § 87(2)(b) acknowledged that § 87(2)(b) was in fact found to be in possession of a knife, and that it was recovered by the officers.

Although § 87(2)(b) had initially filed this complaint, he was ultimately uncooperative with the investigation, but did provide a brief phone statement in regards § 87(2)(g).

§ 87(2)(g) (BR15). § 87(2)(b) stated § 87(2)(b) was asked by PO Holder to exit the vehicle first, and stood at the rear of his vehicle. § 87(2)(b) thought that § 87(2)(b) was frisked and searched, but acknowledged that he did not see any officer frisk or search § 87(2)(b). After a minute, PO Holder approached the passenger side, asked § 87(2)(b) to exit and he complied, and either PO Holder or PO Lall frisked and searched him. § 87(2)(b) acknowledged that a knife was recovered from his left front pants pocket, as well as a fraudulent Pennsylvania state identification card, and that he was arrested in regards.

IAB Warrant Check Audits (“WCA”) were conducted, which revealed that PO Holder and PO Sidorskiy conducted warrants checks on § 87(2)(b) (BR02), and that PO Lall and PO Holder conducted warrants checks on § 87(2)(b) on the incident date (BR03).

Arrest report #§ 87(2)(b) generated on § 87(2)(b), at approximately 1:30 a.m., and prepared by PO Holder, in sum and substance reported that after stopping a white, 2014 BMW 650i for excessive window tints, he observed § 87(2)(b) in the passenger seat with a gravity knife in his front left pants pocket (BR04). PO Holder further reported that § 87(2)(b) was found in possession of a fraudulent instrument, and that he had an active, witness-only I-card, #§ 87(2)(b). § 87(2)(b) was charged with § 87(2)(b).

PO Lall stated on May 12, 2018, at approximately 1:00 a.m., he and his partners stopped § 87(2)(b)'s vehicle after observing it had excessively tinted windows, wherein he approached the passenger side, PO Holder approached the driver side, and PO Sidorskiy positioned himself near the trunk of the vehicle (BR05). PO Holder asked § 87(2)(b) for his license and registration, while PO Lall exchanged pleasantries with § 87(2)(b) in the passenger seat through the open window, and shortly thereafter, PO Holder removed § 87(2)(b) and § 87(2)(b) from the vehicle.

PO Lall stated that he assumed § 87(2)(b) and § 87(2)(b) were removed from the vehicle because PO Holder had “seen something.” PO Lall stated that he was not certain what PO Holder had observed, but believed § 87(2)(b) was found to be in possession of a knife. PO Lall acknowledged that he saw the knife in question, but could not describe or recall the specifics regarding the knife. § 87(2)(b) was ordered to exit the vehicle first, and § 87(2)(b) was ordered to exit after. PO Lall did not know why § 87(2)(b) had been ordered to exit the vehicle.

PO Lall acknowledged that § 87(2)(b) was frisked and believed that he conducted the frisk after § 87(2)(b) was found in possession of a knife. PO Lall could not recall whether § 87(2)(b) was compliant with the frisk, or whether § 87(2)(b) complained of anything during the frisk. PO Lall could not recall whether he or one of his partners removed the knife from § 87(2)(b)'s pocket. PO Lall acknowledged that a fraudulent Pennsylvania driver's license was also recovered from § 87(2)(b)'s pocket but he could not recall if he was the officer that found or recovered it. PO Lall did not recall whether § 87(2)(b) was handcuffed during the frisk and search, or whether he was handcuffed afterwards.

PO Lall thought that § 87(2)(b) was frisked as well, though he did not know whether PO Holder or PO Sidorskiy conducted the frisk, nor the reasoning behind § 87(2)(b) being frisked. PO Lall speculated that § 87(2)(b)'s name could have “popped up” with a warrant or a suspended license, which could have been the reason behind the frisk, but he did not know as his focus was on § 87(2)(b) on the passenger side of the vehicle. PO Lall could not recall whether PO Sidorskiy interacted or frisked either § 87(2)(b) or § 87(2)(b) during the incident.

§ 87(2)(g) PO Holder stated that after stopping § 87(2)(b)'s vehicle, he approached the driver's side and asked for his license and registration (BR06). PO Holder was uncertain of where PO Lall and PO Sidorskiy were positioned at the time, but stated without prompt: "I did all the talking, I did the frisk, I did the search, I did everything." While § 87(2)(b) looked for the requested documents, PO Holder observed the clip of a foldable knife, and the top part of a knife handle, protruding from the front left pants pocket of § 87(2)(b).

After § 87(2)(b) produced his documents, PO Holder walked around to the passenger side the vehicle, and asked § 87(2)(b) for his license. § 87(2)(b) asked why, and PO Holder said because of the knife clipped to his pocket. § 87(2)(b) told PO Holder that the blade of the knife was less under four inches, and that he was allowed to have it. PO Holder replied, "For my safety, give me the knife. And I'm going to run your information." § 87(2)(b) gave the knife to PO Holder, who determined that it was a gravity knife by giving the knife a "flick," which instantly opened it. PO Holder asked § 87(2)(b) if he works, thinking maybe he may have used it for his occupation. However, § 87(2)(b) replied no and repeated that it did not matter because he was allowed to carry the knife.

§ 87(2)(b) opened his wallet to retrieve his identification, and PO Holder observed that he had two driver's licenses—one for New York under the name § 87(2)(b) and one for Pennsylvania under the name § 87(2)(b). § 87(2)(b) took out the Pennsylvania identification and placed it in the back of his wallet, and gave PO Holder his New York identification. PO Holder asked § 87(2)(b) "Who is § 87(2)(b) and why he was in possession of the Pennsylvania identification. § 87(2)(b) replied, "Oh, that's nothing. I just use that." PO Holder asked to see it and § 87(2)(b) handed it to him.

PO Holder ran § 87(2)(b)'s NYS information via his department cell phone and found that he had an active, witness-only I-card, #§ 87(2)(b). PO Holder stated that, based on the active I-Card, and the gravity knife found on his person, he re-approached § 87(2)(b) told him to exit the vehicle, said he was placing him under arrest for the knife and the I-card, and handcuffed him. PO Holder said that § 87(2)(b) was not compliant with being arrested as he did not think the knife he possessed was in fact illegal to carry, and did not believe he had an I-Card.

PO Holder acknowledged that a warrant check was also conducted for § 87(2)(b) and, although he was not certain, he believed that § 87(2)(b)'s driver's license was either suspended, or he had a warrant at the time of the incident. PO Holder asked § 87(2)(b) to step out of the vehicle and he complied.

§ 87(2)(b) presented a DEA card and a mini shield to PO Holder, once during the initiation of the vehicle stop and again after § 87(2)(b) was handcuffed. PO Holder stated that § 87(2)(b) wanted him to show him and § 87(2)(b) a courtesy in regards. PO Holder told § 87(2)(b) "Listen, the guy you're with has an extensive history. Do not bring up a cop's name or information because this cop should not be associated with this person."

PO Holder acknowledged that he frisked § 87(2)(b) and stated that he did so based upon § 87(2)(b) being arrested for possession of a gravity knife in § 87(2)(b)'s vehicle, and because § 87(2)(b) had either an open warrant or a suspended license. PO Holder did not articulate any additional facts or circumstances that led him to frisk § 87(2)(b). PO Holder did not recall searching § 87(2)(b). PO Holder said that § 87(2)(b) was compliant with being frisked.

PO Sidorskiy had a limited recollection of this incident, and was unable to provide a substantive statement. PO Sidorskiy did not approach either the driver or passenger side of the vehicle during the stop, and remained at the back of the vehicle (BR07). PO Sidorskiy did not hear any of the conversation that occurred between PO Holder, PO Lall, and the occupants of the vehicle.

If a police officer develops a reasonable suspicion that a person is armed and dangerous, the officer may frisk the person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury...Reasonable suspicion that a person is armed and dangerous may arise from the officer's observations or the facts and circumstances of the encounter. The purpose of the frisk is to ensure the safety of the officer and not to locate evidence of a crime. Where the frisk reveals an object that the officer reasonably suspects may be a weapon, the officer may search only those interior portions of the stopped person's clothing to remove the weapon. Patrol Guide, 212-11, Sec. 36-40 (BR08).

In People v. Driscoll, the court found that to conduct a protective pat frisk, an officer must have knowledge of some fact or circumstance that supports a reasonable suspicion that the suspect is armed or poses a threat to safety. In that case, the court found that officers who relied on having, though not acting upon, probable cause to arrest an individual in his vehicle for a noise violation, the individual's parole status, and the individual's initial refusal to exit his vehicle, as being insufficient justification to frisk the individual given the absence of reasonable suspicion. People v. Driscoll, 101 A.D.3d 1466 (App. Div. 2012) (BR09).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C —Abuse of Authority: Police Officer James Holder searched the trunk of the vehicle in which § 87(2)(b) was an occupant.

After conducting a frisk of § 87(2)(b) PO Holder asked him if there were any weapons in the vehicle (BR01). § 87(2)(b) replied no, and PO Holder, and either PO Sidorskiy or PO Lall, searched his vehicle. § 87(2)(b) stated that he initially “didn’t mind” his vehicle being searched, but described the search as extensive. § 87(2)(b) did not directly observe his vehicle being searched, as he was faced away from his vehicle at the time. § 87(2)(b) could not definitely state which officer remained at the back of his vehicle with him, and thought that all three officers interchanged and took turns searching.

After completing the search of the passenger compartment of § 87(2)(b) s vehicle, PO Holder ordered § 87(2)(b) to reenter his vehicle and “pop” the trunk. § 87(2)(b) asked why he needed to open the trunk, and PO Holder merely repeated his prior order. § 87(2)(b) complied and PO Holder searched the trunk of his vehicle, including § 87(2)(b) s personal duffel bag therein containing his clothes, which he found unzipped and left open after the incident. § 87(2)(b) further stated that when PO Holder returned to the driver side after searching the trunk, he referred to him as the “Polo King,” because § 87(2)(b) had a number of polo shirts in his duffel bag.

After PO Holder concluded the search of the trunk, the officers placed § 87(2)(b) inside of their RMP, § 87(2)(b) returned to his vehicle, and all parties left the scene.

PO Lall initially stated that he could not remember whether § 87(2)(b) s vehicle was searched, but said it was possible the “reachable/lunge-able” areas of the vehicle may have been searched after discovery of the knife (BR05). PO Lall did not recall whether the trunk of the vehicle was searched, and did not recall PO Holder refer to § 87(2)(b) as the “Polo King.”

PO Sidorskiy stated that he could not recall if § 87(2)(b) s vehicle was searched by PO Holder or PO Lall, and denied that he searched any part of the vehicle (BR07).

PO Holder acknowledged searching § 87(2)(b) s vehicle, due to § 87(2)(b) s arrest for possession of a gravity knife (BR06). PO Holder only quickly searched the “grabbable/lunge-able areas,” to determine if there were any additional weapons in the vehicle. PO Holder denied that he opened any internal compartments within the vehicle during the search.

PO Holder stated that, after completing the search of the passenger compartment of § 87(2)(b) s vehicle, “I opened the trunk, just did a quick search of the trunk, and...I didn’t arrest him.” PO Holder searched the trunk to check for any additional weapons. PO Holder denied that he searched through any duffel bags in the trunk, and noted that there were lots of clothes “sprawled out, all over,” though he added that some clothes were in bags and some were not. PO Holder acknowledged that he did refer to § 87(2)(b) as the “Polo King,” in reference to his many polo shirts in the trunk.

In People v. Belton, the court held that a valid arrest for a crime authorizes a warrantless search -- for a reasonable time and to a reasonable extent -- of a vehicle and of a closed container visible in the passenger compartment of the vehicle which the arrested person is driving or in which he is a passenger when the circumstances give reason to believe that the vehicle or its visible contents may be related to the crime for which the arrest is being made (as possibly containing contraband or as having been used in the commission of the crime) or there is reason to believe that a weapon may be discovered or access to means of escape thwarted. People v. Belton, 55 N.Y.2d 49 (1982) (BR11).

§ 87(2)(g)

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

Civilian and Officer CCRB Histories

- This is the first case in which § 87(2)(b) and § 87(2)(b) have been a party.
- PO Holder, a seven-year-member-of-service, has had four prior CCRB complaints filed against him, with a total of six allegations, one of which has been substantiated (See officer history). § 87(2)(b)
 - In CCRB case #201502028, a discourtesy allegation was substantiated against PO Holder, which recommended he receive Formalized Training, and the NYPD penalized him with Command Level Instructions.
 - PO Holder is a subject of two concurrent CCRB complaints, CCRB #201810378 and #201810413, involving allegations of vehicle stops, vehicle search, and a frisk, which are pending investigation.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation
- As of October 26, 2018, neither § 87(2)(b) nor § 87(2)(b) has filed a Notice of Claim with the NYC Comptroller's office in regards to this incident (BR12).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
- [REDACTED]

Squad No.: 7

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|---------------|-----------|--------------------|-------|
| Investigator: | _____ | _____ | _____ |
| | Signature | Print Title & Name | Date |

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| Squad Leader: | _____ | _____ | _____ |
| | Signature | Print Title & Name | Date |

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|-----------|-----------|--------------------|-------|
| Reviewer: | _____ | _____ | _____ |
| | Signature | Print Title & Name | Date |